

108TH CONGRESS
2D SESSION

S. 129

IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 2004

Referred to the Committee on Government Reform

AN ACT

To provide for reform relating to Federal employment, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Federal Workforce Flexibility Act of 2003”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—REFORMS RELATING TO FEDERAL HUMAN CAPITAL
MANAGEMENT

Sec. 101. Recruitment, relocation, and retention bonuses.

Sec. 102. Streamlined critical pay authority.

Sec. 103. Civil service retirement system computation for part-time service.

Sec. 104. Retirement service credit for cadet or midshipman service.

Sec. 105. Senior Executive Service authority for White House Office of Administration.

TITLE II—REFORMS RELATING TO FEDERAL EMPLOYEE CAREER
DEVELOPMENT AND BENEFITS

Sec. 201. Agency training.

Sec. 202. Annual leave enhancements.

Sec. 203. Compensatory time off for travel.

3 **TITLE I—REFORMS RELATING**
 4 **TO FEDERAL HUMAN CAP-**
 5 **ITAL MANAGEMENT**

6 **SEC. 101. RECRUITMENT, RELOCATION, AND RETENTION**
 7 **BONUSES.**

8 (a) BONUSES.—

9 (1) IN GENERAL.—Chapter 57 of title 5, United
 10 States Code, is amended by inserting after section
 11 5754 the following:

12 **“§ 5754a. Recruitment and relocation bonuses**

13 “(a) In this section, the term ‘employee’ has the
 14 meaning given that term under section 2105, except that
 15 such term also includes an employee described under sub-
 16 section (c) of that section.

1 “(b)(1) The Office of Personnel Management may
2 authorize the head of an agency to pay a bonus to an indi-
3 vidual appointed or moved to a position that is likely to
4 be difficult to fill in the absence of such a bonus, if the
5 individual—

6 “(A)(i) is newly appointed as an employee of
7 the Federal Government; or

8 “(ii) is currently employed by the Federal Gov-
9 ernment and moves to a new position in the same
10 geographic area under circumstances described in
11 regulations of the Office; or

12 “(B) is currently employed by the Federal Gov-
13 ernment and must relocate to accept a position sta-
14 tioned in a different geographic area.

15 “(2) Except as provided by subsection (h), a bonus
16 may be paid under this section only to an employee cov-
17 ered by the General Schedule pay system established
18 under subchapter III of chapter 53.

19 “(c)(1) Payment of a bonus under this section shall
20 be contingent upon the employee entering into a written
21 service agreement to complete a period of employment
22 with the agency, not to exceed 4 years. The Office may,
23 by regulation, prescribe a minimum service.

24 “(2)(A) The agreement shall include—

25 “(i) the length of the required service period;

1 “(ii) the amount of the bonus;

2 “(iii) the method of payment; and

3 “(iv) other terms and conditions under which
4 the bonus is payable, subject to subsections (d) and
5 (e) and regulations of the Office.

6 “(B) The terms and conditions for paying a bonus,
7 as specified in the service agreement, shall include—

8 “(i) the conditions under which the agreement
9 may be terminated before the agreed-upon service
10 period has been completed; and

11 “(ii) the effect of the termination.

12 “(3) The agreement shall be made effective upon em-
13 ployment with the agency or movement to a new position
14 or geographic area, as applicable, except that a service
15 agreement with respect to a recruitment bonus may be
16 made effective at a later date under circumstances de-
17 scribed in regulations of the Office, such as when there
18 is an initial period of formal basic training.

19 “(d)(1) Except as provided in subsection (e), a bonus
20 under this section shall not exceed 25 percent of the an-
21 nual rate of basic pay of the employee at the beginning
22 of the service period multiplied by the number of years
23 (or fractions thereof) in the service period, not to exceed
24 4 years.

1 “(2) A bonus under this section may be paid as an
2 initial lump sum, in installments, as a final lump sum
3 upon the completion of the full service period, or in a com-
4 bination of these forms of payment.

5 “(3) A bonus under this section is not part of the
6 basic pay of an employee for any purpose.

7 “(4) Under regulations of the Office, a recruitment
8 bonus under this section may be paid to an eligible indi-
9 vidual before that individual enters on duty.

10 “(e) The Office may authorize the head of an agency
11 to waive the limitation under subsection (d)(1) based on
12 a critical agency need, subject to regulations prescribed
13 by the Office. Under such a waiver, the amount of the
14 bonus may be up to 50 percent of the employee’s annual
15 rate of basic pay at the beginning of the service period
16 multiplied by the number of years (or fractions thereof)
17 in the service period, not to exceed 100 percent of the em-
18 ployee’s annual rate of basic pay at the beginning of the
19 service period.

20 “(f) The Office shall require that, before paying a
21 bonus under this section, an agency shall establish a plan
22 for paying recruitment bonuses and a plan for paying relo-
23 cation bonuses, subject to regulations prescribed by the
24 Office.

1 “(g) The Office may prescribe regulations to carry
2 out this section, including regulations relating to the re-
3 payment of a recruitment or relocation bonus in appro-
4 priate circumstances when the agreed-upon service period
5 has not been completed.

6 “(h)(1) At the request of the head of an Executive
7 agency, the Office may extend coverage under this section
8 to categories of employees within the agency who other-
9 wise would not be covered by this section.

10 “(2) A bonus may not be paid under this section to
11 an individual who is appointed to, or who holds—

12 “(A) a position to which an individual is ap-
13 pointed by the President, by and with the advice and
14 consent of the Senate;

15 “(B) a position in the Senior Executive Service
16 as a noncareer appointee (as such term is defined
17 under section 3132(a)); or

18 “(C) a position which has been excepted from
19 the competitive service by reason of its confidential,
20 policy-determining, policy-making, or policy-advo-
21 cating character.

22 “(i)(1) The Office of Personnel Management shall
23 submit an annual report on bonuses paid under this sec-
24 tion to the Committee on Governmental Affairs of the Sen-

1 ate and the Committee on Government Reform of the
2 House of Representatives.

3 “(2) Each report submitted under this subsection
4 shall include the use by each agency of recruitment and
5 relocation bonuses, including, with respect to each agency
6 and each type of bonus, the number and amount of bo-
7 nuses by grade (including the General Schedule, the Sen-
8 ior Executive Service, and positions on the Executive
9 Schedule).

10 “(j)(1) An individual may not be paid a recruitment
11 bonus under this section and a recruitment bonus under
12 section 5753.

13 “(2) An individual may not be paid a relocation bonus
14 under this section and a relocation bonus under section
15 5753.

16 **“§ 5754b. Retention bonuses**

17 “(a) In this section, the term ‘employee’ has the
18 meaning given that term under section 2105, except that
19 such term also includes an employee described in sub-
20 section (c) of that section.

21 “(b) The Office of Personnel Management may au-
22 thorize the head of an agency to pay a retention bonus
23 to an employee, subject to regulations prescribed by the
24 Office, if—

1 “(1) the unusually high or unique qualifications
2 of the employee or a special need of the agency for
3 the employee’s services makes it essential to retain
4 the employee; and

5 “(2) the agency determines that, in the absence
6 of a retention bonus, the employee would be likely to
7 leave—

8 “(A) the Federal service; or

9 “(B) for a different position in the Federal
10 service under conditions described in regula-
11 tions of the Office.

12 “(c) The Office may authorize the head of an agency
13 to pay retention bonuses to a group of employees in 1 or
14 more categories of positions in 1 or more geographic areas,
15 subject to the requirements of subsection (b)(1) and regu-
16 lations prescribed by the Office, if there is a high risk that
17 a significant portion of employees in the group would be
18 likely to leave in the absence of retention bonuses.

19 “(d) Except as provided in subsection (j), a bonus
20 may be paid only to an employee covered by the General
21 Schedule pay system established under subchapter III of
22 chapter 53.

23 “(e)(1) Payment of a retention bonus is contingent
24 upon the employee entering into a written service agree-

1 ment with the agency to complete a period of employment
2 with the agency.

3 “(2)(A) The agreement shall include—

4 “(i) the length of the required service period;

5 “(ii) the amount of the bonus;

6 “(iii) the method of payment; and

7 “(iv) other terms and conditions under which
8 the bonus is payable, subject to subsections (f) and
9 (g) and regulations of the Office.

10 “(B) The terms and conditions for paying a bonus,
11 as specified in the service agreement, shall include—

12 “(i) the conditions under which the agreement
13 may be terminated before the agreed-upon service
14 period has been completed; and

15 “(ii) the effect of the termination.

16 “(3)(A) Notwithstanding paragraph (1), a written
17 service agreement is not required if the agency pays a re-
18 tention bonus in biweekly installments and sets the install-
19 ment payment at the full bonus percentage rate estab-
20 lished for the employee with no portion of the bonus de-
21 ferred.

22 “(B) If an agency pays a retention bonus in accord-
23 ance with subparagraph (A) and makes a determination
24 to terminate the payments, the agency shall provide writ-
25 ten notice to the employee of that determination. Except

1 as provided in regulations of the Office, the employee shall
2 continue to be paid the retention bonus through the end
3 of the pay period in which such written notice is provided.

4 “(4) A retention bonus for an employee may not be
5 based on any period of such service which is the basis for
6 a recruitment or relocation bonus under section 5753 or
7 5754a.

8 “(f)(1) Except as provided in subsection (g), a reten-
9 tion bonus, which shall be stated as a percentage of the
10 employee’s basic pay for the service period associated with
11 the bonus, may not exceed—

12 “(A) 25 percent of the employee’s basic pay if
13 paid under subsection (b); or

14 “(B) 10 percent of an employee’s basic pay if
15 paid under subsection (c).

16 “(2) A retention bonus may be paid to an employee
17 in installments after completion of specified periods of
18 service or in a single lump sum at the end of the full pe-
19 riod of service required by the agreement. An installment
20 payment may not exceed the product derived from multi-
21 plying the amount of basic pay earned in the installment
22 period by a percentage not to exceed the bonus percentage
23 rate established for the employee. If the installment pay-
24 ment percentage is less than the bonus percentage rate,
25 the accrued but unpaid portion of the bonus is payable

1 as part of the final installment payment to the employee
2 after completion of the full service period under the terms
3 of the service agreement.

4 “(3) A retention bonus is not part of the basic pay
5 of an employee for any purpose.

6 “(g) Upon the request of the head of an agency, the
7 Office may waive the limit established under subsection
8 (f)(1) and permit the agency head to pay an otherwise
9 eligible employee or category of employees retention bo-
10 nuses of up to 50 percent of basic pay, based on a critical
11 agency need.

12 “(h) The Office shall require that, before paying a
13 bonus under this section, an agency shall establish a plan
14 for paying retention bonuses, subject to regulations pre-
15 scribed by the Office.

16 “(i) The Office may prescribe regulations to carry out
17 this section.

18 “(j)(1) At the request of the head of an Executive
19 agency, the Office may extend coverage under this section
20 to categories of employees within the agency who other-
21 wise would not be covered by this section.

22 “(2) A bonus may not be paid under this section to
23 an employee who holds—

1 “(A) a position to which an individual is ap-
2 pointed by the President, by and with the advice and
3 consent of the Senate;

4 “(B) a position in the Senior Executive Service
5 as a noncareer appointee (as such term is defined
6 under section 3132(a)); or

7 “(C) a position which has been excepted from
8 the competitive service by reason of its confidential,
9 policy-determining, policy-making, or policy-advo-
10 cating character.

11 “(k)(1) The Office of Personnel Management shall
12 submit an annual report on bonuses paid under this sec-
13 tion to the Committee on Governmental Affairs of the Sen-
14 ate and the Committee on Government Reform of the
15 House of Representatives.

16 “(2) Each report submitted under this subsection
17 shall include the use by each agency of retention bonuses,
18 including, with respect to each agency, the number and
19 amount of bonuses by grade (including the General Sched-
20 ule, the Senior Executive Service, and positions on the Ex-
21 ecutive Schedule).

22 “(l) An employee may not be paid a retention bonus
23 under this section and a retention allowance under section
24 5754.”.

1 (2) TECHNICAL AND CONFORMING AMEND-
 2 MENT.—The table of sections for chapter 57 of title
 3 5, United States Code, is amended by inserting after
 4 the item relating to section 5754 the following:

“5754a. Recruitment and relocation bonuses.
 “5754b. Retention bonuses.”.

5 (b) EFFECTIVE DATE AND APPLICATION.—This sec-
 6 tion shall take effect on the first day of the first applicable
 7 pay period beginning on or after 180 days after the date
 8 of enactment of this Act.

9 **SEC. 102. STREAMLINED CRITICAL PAY AUTHORITY.**

10 Section 5377 of title 5, United States Code, is
 11 amended—

12 (1) by striking subsection (c) and inserting the
 13 following:

14 “(c) The Office of Personnel Management, in con-
 15 sultation with the Office of Management and Budget,
 16 may, upon the request of the head of an agency, grant
 17 authority to fix the rate of basic pay for 1 or more posi-
 18 tions in such agency in accordance with this section.”;

19 (2) in subsection (e)(1), by striking “Office of
 20 Management and Budget” and inserting “Office of
 21 Personnel Management”;

22 (3) by striking subsections (f) and (g) and in-
 23 serting the following:

1 “(f) The Office of Personnel Management may not
 2 authorize the exercise of authority under this section with
 3 respect to more than 800 positions at any 1 time, of which
 4 not more than 30 may, at any such time, be positions the
 5 rate of basic pay for which would otherwise be determined
 6 under subchapter II.

7 “(g) The Office of Personnel Management shall con-
 8 sult with the Office of Management and Budget before
 9 making any decision to grant or terminate any authority
 10 under this section.”; and

11 (4) in subsection (h), by striking “The Office of
 12 Management and Budget shall report to the Com-
 13 mittee on Post Office and Civil Service” and insert-
 14 ing “The Office of Personnel Management shall re-
 15 port to the Committee on Government Reform.”.

16 **SEC. 103. CIVIL SERVICE RETIREMENT SYSTEM COMPUTA-**
 17 **TION FOR PART-TIME SERVICE.**

18 Section 8339(p) of title 5, United States Code, is
 19 amended by adding at the end the following:

20 “(3) In the administration of paragraph (1)—

21 “(A) subparagraph (A) of such paragraph
 22 shall apply to any service performed before, on,
 23 or after April 7, 1986;

24 “(B) subparagraph (B) of such paragraph
 25 shall apply to all service performed on a part-

1 time or full-time basis on or after April 7,
2 1986; and

3 “(C) any service performed on a part-time
4 basis before April 7, 1986, shall be credited as
5 service performed on a full-time basis.”.

6 **SEC. 104. RETIREMENT SERVICE CREDIT FOR CADET OR**
7 **MIDSHIPMAN SERVICE.**

8 (a) CIVIL SERVICE RETIREMENT SYSTEM.—Section
9 8331(13) of title 5, United States Code, is amended by
10 striking “but” and inserting “and includes service as a
11 cadet at the United States Military Academy, the United
12 States Air Force Academy, or the United States Coast
13 Guard Academy, or as a midshipman at the United States
14 Naval Academy, but”.

15 (b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—
16 Section 8401(31) of title 5, United States Code, is amend-
17 ed by striking “but” and inserting “and includes service
18 as a cadet at the United States Military Academy, the
19 United States Air Force Academy, or the United States
20 Coast Guard Academy, or as a midshipman at the United
21 States Naval Academy, but”.

22 (c) EFFECTIVE DATE AND APPLICATION.—The
23 amendments made by this section shall apply to—

1 (1) any annuity, eligibility for which is based
2 upon a separation occurring before, on, or after the
3 date of enactment of this Act; and

4 (2) any period of service as a cadet or mid-
5 shipman at the military service academy of the
6 Army, Air Force, Coast Guard, or Navy, occurring
7 before, on, or after the date of enactment of this
8 Act.

9 **SEC. 105. SENIOR EXECUTIVE SERVICE AUTHORITY FOR**
10 **WHITE HOUSE OFFICE OF ADMINISTRATION.**

11 Chapter 2 of title 3, United States Code, is amend-
12 ed—

13 (1) in section 107(b)—

14 (A) in paragraph (2), in the first sentence,
15 by striking “section 3101” and inserting “sec-
16 tions 3101 and 3132”; and

17 (B) by adding at the end the following:

18 “(3) Any permanent Senior Executive Service
19 position established under paragraph (2) shall be a
20 career reserved position.”;

21 (2) in section 114—

22 (A) by redesignating that section as sub-
23 section (a);

24 (B) by amending that subsection, as so re-
25 designated, by striking “minimum rate of basic

1 pay then currently paid for GS-16” and insert-
 2 ing “maximum rate of basic pay then currently
 3 paid for GS-15”; and

4 (C) by adding at the end the following:

5 “(b) The limitation established in subsection (a) shall
 6 not apply to an individual appointed under the authority
 7 in section 107(b)(2), in accordance with section 3132 of
 8 title 5.”.

9 **TITLE II—REFORMS RELATING**
 10 **TO FEDERAL EMPLOYEE CA-**
 11 **REER DEVELOPMENT AND**
 12 **BENEFITS**

13 **SEC. 201. AGENCY TRAINING.**

14 (a) TRAINING TO ACCOMPLISH PERFORMANCE
 15 PLANS AND STRATEGIC GOALS.—Section 4103 of title 5,
 16 United States Code, is amended by adding at the end the
 17 following:

18 “(c) The head of each agency shall—

19 “(1) evaluate each program or plan established,
 20 operated, or maintained under subsection (a) with
 21 respect to accomplishing specific performance plans
 22 and strategic goals in performing the agency mis-
 23 sion; and

24 “(2) modify such program or plan to accom-
 25 plish such plans and goals.”.

1 (b) AGENCY TRAINING OFFICER; SPECIFIC TRAINING
2 PROGRAMS.—

3 (1) IN GENERAL.—Chapter 41 of title 5, United
4 States Code, is amended by adding after section
5 4119 the following:

6 **“§ 4120. Agency training officer**

7 “Each agency shall appoint or designate a training
8 officer who shall be responsible for developing, coordi-
9 nating, and administering training for the agency.

10 **“§ 4121. Specific training programs**

11 “In consultation with the Office of Personnel Man-
12 agement, each head of an agency shall establish—

13 “(1) a comprehensive management succession
14 program to provide training to employees to develop
15 managers for the agency; and

16 “(2) a program to provide training to managers
17 on actions, options, and strategies a manager may
18 use in—

19 “(A) relating to employees with unaccept-
20 able performances; and

21 “(B) mentoring employees and improving
22 employee performance and productivity.”.

23 (2) TECHNICAL AND CONFORMING AMEND-
24 MENT.—The table of sections for chapter 41 of title

1 5, United States Code, is amended by adding at the
2 end the following:

“4120. Agency training officer.

“4121. Specific training programs.”.

3 **SEC. 202. ANNUAL LEAVE ENHANCEMENTS.**

4 (a) ACCRUAL OF LEAVE FOR NEWLY HIRED FED-
5 ERAL EMPLOYEES WITH QUALIFIED EXPERIENCE.—

6 (1) IN GENERAL.—Section 6303 of title 5,
7 United States Code, is amended by adding at the
8 end the following:

9 “(e)(1) In this subsection, the term ‘period of quali-
10 fied non-Federal career experience’ means any equal pe-
11 riod of service performed by an individual that—

12 “(A) except for this subsection would not other-
13 wise be service performed by an employee for pur-
14 poses of subsection (a); and

15 “(B) was performed in a position—

16 “(i) the duties of which were directly re-
17 lated to the duties of the position in an agency
18 that such individual holds; and

19 “(ii) which meets such other conditions as
20 the Office of Personnel Management shall pre-
21 scribe by regulation.

22 “(2) For purposes of subsection (a), the head of an
23 agency may deem a period of qualified non-Federal career

1 experience performed by an individual to be a period of
 2 service performed as an employee.”.

3 (2) EFFECTIVE DATE.—This section shall take
 4 effect 120 days after the date of enactment of this
 5 Act and shall only apply to an individual hired on
 6 or after that effective date.

7 (b) SENIOR EXECUTIVE SERVICE ANNUAL LEAVE
 8 ENHANCEMENTS.—

9 (1) IN GENERAL.—Section 6303(a) of title 5,
 10 United States Code, is amended—

11 (A) in paragraph (2), by striking “and” at
 12 the end;

13 (B) in paragraph (3), by striking the pe-
 14 riod at the end and inserting “; and”; and

15 (C) by adding after paragraph (3) the fol-
 16 lowing:

17 “(4) one day for each full biweekly pay period
 18 for an employee in a position paid under section
 19 5376 or 5383, or for an employee in an equivalent
 20 category for which the minimum rate of basic pay is
 21 greater than the rate payable at GS–15, step 10.”.

22 (2) REGULATIONS.—Not later than 120 days
 23 after the date of enactment of this Act, the Office
 24 of Personnel Management shall prescribe regulations

1 to carry out the amendments made by this sub-
 2 section.

3 (3) EFFECTIVE DATES.—

4 (A) IN GENERAL.—Paragraph (1) shall
 5 take effect 120 days after the date of enact-
 6 ment of this Act.

7 (B) REGULATIONS.—Paragraph (2) shall
 8 take effect on the date of enactment of this Act.

9 **SEC. 203. COMPENSATORY TIME OFF FOR TRAVEL.**

10 (a) IN GENERAL.—Subchapter V of chapter 55 of
 11 title 5, United States Code, is amended by adding at end
 12 the following:

13 **“§ 5550b. Compensatory time off for travel**

14 “(a) Notwithstanding section 5542(b)(2), each hour
 15 spent by an employee in travel status away from the offi-
 16 cial duty station of the employee, that is not otherwise
 17 compensable, shall be treated as an hour of work or em-
 18 ployment for purposes of calculating compensatory time
 19 off.

20 “(b) An employee who has any hours treated as hours
 21 of work or employment for purposes of calculating com-
 22 pensatory time under subsection (a), shall not be entitled
 23 to payment for any such hours that are unused as compen-
 24 satory time.

1 “(c) Not later than 30 days after the date of enact-
 2 ment of this section, the Office of Personnel Management
 3 shall prescribe regulations to implement this section.”.

4 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 5 The table of sections for chapter 55 of title 5, United
 6 States Code, is amended by inserting after the item relat-
 7 ing to section 5550a the following:

“5550b. Compensatory time off for travel.”.

Passed the Senate April 8, 2004.

Attest:

EMILY J. REYNOLDS,

Secretary.